

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT ANDREW HREHA,) Case No. SACV 19-0192-JFW (JPR)
Plaintiff,)
v.) ORDER DISMISSING COMPLAINT WITH
ORANGE COUNTY DISTRICT) LEAVE TO AMEND
ATTORNEY et al.,)
Defendants.)

On January 22, 2019, Plaintiff, an inmate at the Central Men's Jail in Orange County, filed in the Southern District of California a civil-rights action under 42 U.S.C. § 1983. The case was transferred to this District on January 31, and he was subsequently granted leave to proceed in forma pauperis. His claims arise from his August 2018 arrest and ongoing detention on unspecified charges.

After screening the Complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A, the Court finds that its allegations fail to state a claim upon which relief might be granted. Because it appears that at least some of the defects can be cured by amendment, it

1 is dismissed with leave to amend. See Lopez v. Smith, 203 F.3d
2 1122, 1130-31 (9th Cir. 2000) (en banc) (holding that pro se
3 litigant must be given leave to amend complaint unless absolutely
4 clear that deficiencies cannot be cured). If Plaintiff desires
5 to pursue any of his claims, he is ORDERED to file a first
6 amended complaint within 28 days of the date of this order,
7 remedying the deficiencies discussed below.

8 **ALLEGATIONS OF THE COMPLAINT**

9 On August 12, 2018, "Officer Serial No. 1179 Tom Fullerton"
10 (Compl. at 1, 2, 3) apparently arrested Plaintiff (id. at 2).¹
11 Plaintiff "could be charged with no more than a misdemeanor
12 offense" "as stated in P[enal] C[ode] [section] 290.018(g)." ²
13 (Id. at 3; see also id. at 2.) The arresting officer nonetheless
14 "charged" Plaintiff with a "felony." (Id. at 2, 4.) Plaintiff
15 does not allege what felony or felonies he was charged with.
16 (See generally id. at 1-7.)

17 When Plaintiff appeared in court "at arra[ign]ment,"

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19 ¹ It is unclear whether Plaintiff intends to name the
20 arresting officer as a Defendant. The caption lists the "Fullerton
21 Police Dep[artmen]t" as a Defendant (Compl. at 1), and the portion
22 of the complaint form containing spaces for "Defendants" names
23 "Fullerton Police" as a Defendant but alleges that that party "is
24 employed as a peace officer" and is sued in his "official capacity"
(id. at 2). Should he choose to file an amended pleading,
Plaintiff must clearly indicate whom he is suing, on what theory,
in what capacity, and whether each Defendant is an individual or an
entity.

25 ² That provision makes it a misdemeanor punishable by up to
26 six months in jail to willfully fail to comply with sex-offender
27 registration requirements. See Cal. Penal Code § 290.018(g). It
28 also provides that repeated willful noncompliance may lead to a
longer term in county jail or state prison. See § 290.018(a), (b),
(g).

1 apparently on August 12 or 14 or September 4, 2018 (see id. at 1,
2 3), "the Judge in C-J-1 placed a bail of \$1,000,000" (id. at 3;
3 see also id. at 2, 4). Plaintiff asserts that "all court records
4 show that in 1975 probation was granted" in "San Bernardino case
5 # CR30763" (id. at 3), and "no other sentence" was handed down
6 (id. at 4; see also id. at 5).³ Therefore, he apparently
7 alleges, the bail amount was unreasonably high. (See id. at 3,
8 4.) Although "court records support [his] claim" (id. at 4),
9 that judge or another Orange County Superior Court judge⁴
10 "refused to appoint an investigator" (id. at 2) and "denied [him]
11 pro-per [p]hone privileges, which has made it impossible for
12 [him] to get an [a]ttorney to help [him]" (id. at 4).

13 The "district [a]ttorney refused to change the charges after
14

15 ³ California's sex-offender-registry website shows that
16 Plaintiff was convicted of "oral copulation" and "lewd and
17 lascivious acts with a child under 14 years of age" in 1975. See
18 Cal. Megan's Law Website, <https://www.meganslaw.ca.gov> (search for
19 "Robert" with "Hreha") (last visited Feb. 22, 2019); see also City
20 of Sausalito v. O'Neill, 386 F.3d 1186, 1223 n.2 (9th Cir. 2004)
21 (court may "take judicial notice of a record of a state agency not
22 subject to reasonable dispute"). That site does not list any
23 sentencing information. But Plaintiff was also convicted of
24 possessing methamphetamine, in 2013, and was sentenced to two years
in state prison. See People v. Hreha, No. G052918, 2016 WL
1544734, at *1 (Cal. Ct. App. Apr. 14, 2016) (noting conviction and
describing Plaintiff as "high-risk sex offender and homeless").
When he was released on parole for that offense, he repeatedly
violated his parole conditions and was arrested and sentenced to
six months in custody. See id. at *1-2.

25 ⁴ The body of the Complaint implies that a single judge, "C-
26 J-1," made all three determinations (see Compl. at 3, 4), but the
27 section containing spaces for "Defendants" alleges that a "Judge in
J-C-1" set Plaintiff's bail and a "Judge C-J-5" "refused to appoint
an investigator or gr[ant] pro-per phone privil[e]ges" (id. at 2).
28

1 being informed b[y] [Plaintiff] in open court" that he had
2 "received probation with no other sentence." (Id. at 4; see also
3 id. at 3.) Plaintiff is apparently facing unspecified felony
4 charges. (Id. at 7.)

5 At some point during his detention, a "sentenced inmate" in
6 Plaintiff's cell began threatening to attack him. (Id. at 3.)
7 Inmate "Mr. Shipp" "ke[pt] threatening [Plaintiff] and [his]
8 fa[milly]." (Id.)⁵ Someone informed nondefendant "Dep[ut]y
9 Arazo" of the situation, and Arazo allegedly said that "he did
10 not give a shit for [Plaintiff] and hoped someone would get
11 [him] ." (Id.) Shipp or another inmate "carried out his threat"
12 (id. at 4), apparently by attacking Plaintiff (see id. at 3), and
13 "pict[]ures were taken and reports prepar[ed]" (id. at 4).
14 "Shipp was moved to another cell fin[al]ly." (Id. at 3.)
15 Plaintiff does not describe any injuries he may have suffered
16 from the attack or treatment he required, sought, or received,
17 and he has not attached any reports or pictures. (See generally
18 id. at 2-7.)

19 Plaintiff sues the Orange County District Attorney, the
20 Fullerton Police Department, the "Orange County She[rif]f's
21 Office," and the Orange County Superior Court (Compl. at 1) as
22 well as, apparently, the judge or judges who set his bail and
23 refused to grant him pro-per phone privileges or appoint an
24 investigator, and possibly the arresting officer (id. at 2; see
25
26

27 ⁵ It is unclear whether "Mr. Shipp" and the "sentenced
28 inmate" who originally threatened Plaintiff are the same person.
(See Compl. at 3.)

1 also supra note 1).⁶ He appears to sue the individual Defendants
2 in their official capacity only. (See id. at 2.) Although he
3 does not specifically enumerate his causes of action, it appears
4 that he brings claims for excessive bail, false arrest, malicious
5 prosecution, deprivations of his Sixth Amendment rights, and
6 failure to protect. (See id. at 2-5.) He seeks \$5 million in
7 compensatory damages, \$10 million in punitive damages,
8 unspecified "medical" and "psychology [sic]" treatment, and "an
9 injunction preventing [D]efendant(s) [from] prosecuting [him] for
10 felonies." (Id. at 7.)

11 **STANDARD OF REVIEW**

12 A complaint may be dismissed as a matter of law for failure
13 to state a claim "where there is no cognizable legal theory or an
14 absence of sufficient facts alleged to support a cognizable legal
15 theory." Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d
16 1035, 1041 (9th Cir. 2010) (as amended) (citation omitted);
17 accord O'Neal v. Price, 531 F.3d 1146, 1151 (9th Cir. 2008). In
18 considering whether a complaint states a claim, a court must
19 generally accept as true all the factual allegations in it.
20 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Hamilton v. Brown,

21
22 ⁶ The caption lists the Defendants as the Orange County
23 District Attorney, sheriff's "[o]ffice," and superior court, and
24 the Fullerton Police Department. (Compl. at 1.) The portion of
25 the Southern District's standard civil-rights complaint form
26 containing spaces for "Defendants," however, lists only the
27 "Fullerton Police" (possibly referring to the arresting officer
28 rather than the department, as discussed supra in note 1), the
superior-court judge or judges, and the County Sheriff. (Id. at
2. Should Plaintiff choose to pursue his claims in an amended
pleading, he must list each Defendant in the caption and make sure
that that list corresponds to the parties named in the body of the
pleading. See Fed. R. Civ. P. 10(a).

1 630 F.3d 889, 892-93 (9th Cir. 2011). The court need not accept
2 as true, however, "allegations that are merely conclusory,
3 unwarranted deductions of fact, or unreasonable inferences." In
4 re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008)
5 (citation omitted); see also Shelton v. Chorley, 487 F. App'x
6 388, 389 (9th Cir. 2012) (finding that district court properly
7 dismissed civil-rights claim when plaintiff's "conclusory
8 allegations" did not support it). Although a complaint need not
9 include detailed factual allegations, it "must contain sufficient
10 factual matter, accepted as true, to 'state a claim to relief
11 that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting
12 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Yagman v.
13 Garcetti, 852 F.3d 859, 863 (9th Cir. 2017). A claim is facially
14 plausible when it "allows the court to draw the reasonable
15 inference that the defendant is liable for the misconduct
16 alleged." Iqbal, 556 U.S. at 678. "A document filed pro se is
17 'to be liberally construed,' and 'a pro se complaint, however
18 inartfully pleaded, must be held to less stringent standards than
19 formal pleadings drafted by lawyers.'" Erickson v. Pardus, 551
20 U.S. 89, 94 (2007) (per curiam) (citations omitted).

21 DISCUSSION

22 I. The Judge and Prosecutor Defendants Are Immune from Suit

23 A. Judicial Immunity

24 Plaintiff sues a judge or judges and the superior court for
25 allegedly setting his bail too high, denying him phone
26 privileges, and "uph[o]ld[ing] [the] arrest complaint," which
27 Plaintiff contends contained the "wrong class [of] crime."
28 (Compl. at 2-3.) Judges are immune from civil liability under

1 § 1983 for acts performed in their judicial capacity. See Dennis
2 v. Sparks, 449 U.S. 24, 27 (1980); Aldabe v. Aldabe, 616 F.2d
3 1089, 1091 (9th Cir. 1980) (per curiam). A judge is not deprived
4 of immunity because his actions were in error. See Stump v.
5 Sparkman, 435 U.S. 349, 356-57 (1978). The alleged acts
6 Plaintiff complains of were clearly performed in a judicial
7 capacity. See, e.g., Miroyan v. Manley, No. 16-cv-00958-JCS
8 (PR), 2016 WL 2606727, at *1-2 (N.D. Cal. May 6, 2016)
9 (dismissing civil-rights complaint without leave to amend because
10 judge's acts of denying bail, ordering plaintiff to take
11 medication, and appointing attorney were all performed in
12 judicial capacity). The judge or judges are therefore immune
13 from suit, and Plaintiff's claims against the judicial Defendants
14 are dismissed. See Dennis, 449 U.S. at 27. Plaintiff should
15 omit those claims from any amended pleading he chooses to file.

16 B. Prosecutorial Immunity

17 Plaintiff sues "Orange County District Attorney." (See
18 Compl. at 1.) It is unclear whether this refers to a particular
19 individual or the district attorney's office as an institution.
20 Section 1983 claims for monetary damages against individual
21 prosecutors are barred by absolute prosecutorial immunity if the
22 claimed violations are based on their activities as legal
23 advocates during the judicial phase of criminal proceedings. Van
24 de Kamp v. Goldstein, 555 U.S. 335, 342-43 (2009); Imbler v.
25 Pachtman, 424 U.S. 409, 430-31 (1976) (prosecutorial immunity
26 applies with "full force" to activities "intimately associated
27 with the judicial phase of the criminal process"; "in initiating
28 a prosecution and in presenting the State's case, the prosecutor

1 is immune from a civil suit for damages under § 1983"); Genzler
2 v. Longanbach, 410 F.3d 630, 637 (9th Cir. 2005) (noting that
3 prosecutor "enjoys absolute immunity from a suit alleging that he
4 maliciously initiated a prosecution, used perjured testimony at
5 trial, or suppressed material evidence at trial," among other
6 things). Plaintiff has not alleged any conduct by any district
7 attorney that is not connected with his arrest and the ensuing
8 criminal proceedings against him. To the extent his claims are
9 brought against any particular district attorney, they are
10 therefore barred by prosecutorial immunity.

11 To the extent Plaintiff attempts to sue the Orange County
12 District Attorney's Office as an entity, he may not do so because
13 California county district attorneys "represent the state when
14 they prepare to and prosecute crimes" or "train[] and develop
15 policies for prosecutorial staff in the area of criminal
16 investigation and prosecution." Duffy v. Alameda Cnty. Dist.
17 Att'y's Off., No. 16-cv-5601-PJH, 2017 WL 2591286, at *2 (N.D.
18 Cal. June 15, 2017) (citation omitted), appeal dismissed, No. 17-
19 16447 (9th Cir. Apr. 12, 2018). Based on sovereign-immunity
20 principles, the 11th Amendment dictates that the State, its
21 agencies, and its officials acting in their official capacity
22 cannot be sued for money damages. See Will v. Mich. Dep't of
23 State Police, 491 U.S. 58, 71 (1989) ("We hold that neither a
24 State nor its officials acting in their official capacities are
25 'persons' under § 1983."); Dittman v. California, 191 F.3d 1020,
26 1025-26 (9th Cir. 1999) ("The State of California has not waived
27 its Eleventh Amendment immunity with respect to claims brought
28 under § 1983 in federal court"); Leer v. Murphy, 844 F.2d

1 628, 631-32 (9th Cir. 1988) (holding that 11th Amendment bars
2 official-capacity actions for damages). Thus, Plaintiff's § 1983
3 claims for money damages against the district attorney's office
4 or any individual district attorney in an official capacity are
5 barred by the 11th Amendment. See Brown v. Cal. Dep't of Corr.,
6 554 F.3d 747, 752 (9th Cir. 2009) (holding that CDCR was entitled
7 to 11th Amendment immunity); Ismail v. Cnty. of Orange, 917 F.
8 Supp. 2d 1060, 1070-71 (C.D. Cal. 2012) (county district
9 attorney's office was entitled to 11th Amendment immunity),
10 aff'd, 676 F. App'x 690, 691 (9th Cir. 2017).

11 The 11th Amendment does not bar official-capacity claims
12 against state officials for prospective injunctive relief, to end
13 a continuing violation of federal law. See Ex parte Young, 209
14 U.S. 123, 155-57 (1908); Doe v. Lawrence Livermore Nat'l Lab.,
15 131 F.3d 836, 839 (9th Cir. 1997). But the injunction Plaintiff
16 seeks (see Compl. at 7), which would prevent the Orange County
17 District Attorney's Office from "prosecuting [him] for felonies,"
18 apparently indefinitely, does not meet that standard. In
19 general, principles of equity and comity prevent a federal court
20 from interfering in ongoing state criminal proceedings. See
21 Younger v. Harris, 401 U.S. 37, 43-47 (1971). This is so even
22 when a plaintiff has alleged a pattern of unconstitutional "bond-
23 setting, sentencing, and jury-fee practices." O'Shea v.
24 Littleton, 414 U.S. 488, 495 (1974); see also id. at 497-504
25 (discussing reasons why injunctive relief was improper).
26 Plaintiff has not even alleged what he is charged with or why any
27 such charges are incorrect, much less any ongoing violation of
28 federal law that would be remedied by the injunction he seeks

1 (see generally Compl. at 7); moreover, his request amounts to a
2 plea for a license to engage in felonious activity, which is both
3 beyond the power of this Court to grant and clearly contrary to
4 the public interest, see eBay Inc. v. MercExchange L.L.C., 547
5 U.S. 388, 391 (2006) (injunction may be warranted when, among
6 other things, "public interest would not be disserved" by it).

7 His claims against the District Attorney's Office or any
8 individual deputy district attorney are therefore dismissed, and
9 he should omit them from any amended pleading he chooses to file.

10 **II. Plaintiff Has Not Stated an Excessive-Bail Claim**

11 Plaintiff also appears to seek relief against the County
12 Sheriff under the Eighth Amendment's Excessive Bail Clause
13 because his bail was set at \$1 million. (See, e.g., Compl. at
14 4.)⁷ The Eighth Amendment prohibits the "imposition of bail
15 conditions that are excessive in light of" "the valid state
16 interests bail is intended to serve." Galen v. Cnty. of L.A.,
17 477 F.3d 652, 660 (9th Cir. 2007) (as amended); see also Cal.
18 Penal Code § 1275 (listing valid state interests). Under some
19 circumstances, excessive-bail claims may be heard in federal
20 court even when an underlying criminal prosecution remains
21 pending. See Arevalo v. Hennessy, 882 F.3d 763, 766-68 (9th Cir.
22 2018).

23 In California at the time of Plaintiff's arrest and
24

25 ⁷ Orange County's inmate-information website lists
26 Plaintiff's bail amount as \$1,005,500. See Orange Cnty. Inmate
27 Info., <http://ws.ocsd.org/Whoisinjail/Search.aspx> (search for
28 "Robert" with "Hreha") (last visited Feb. 22, 2019). That site
does not list what Plaintiff was arrested for or charged with or
whether any case was brought or is pending. See id.

1 detention,⁸ "bail determinations [were] regulated by a
2 comprehensive statutory scheme." Galen, 477 F.3d at 660. Under
3 the law as it existed at times relevant to Plaintiff's claims,
4 superior-court judges had a duty to "prepare, adopt, and annually
5 revise a uniform countywide schedule of bail" for all
6 bail-eligible offenses "except Vehicle Code infractions." Cal.
7 Penal Code § 1269b(c). The county sheriff then determined a
8 particular arrestee's bail amount according to the bail schedule.
9 See § 1269b(a). Judicial officers had the "exclusive authority
10 to enhance or reduce bail" from the default amount listed in the
11 county's bail schedule. Galen, 477 F.3d at 663 (citing § 1269c).
12 To state an excessive-bail claim against an arresting or
13 investigating police officer, a plaintiff must allege facts

14

15 ⁸ Recent cases have cast doubt on the constitutionality of
16 California's statutory bail scheme. See In re Humphrey, 19 Cal.
17 App. 5th 1006, 1041-48 (2018) (finding that petitioner had
18 constitutionally protected liberty interest in individualized bail
19 determination that considered his ability to pay and alternatives
20 to money bail), review granted, No. S247278 (Cal. May 23, 2018);
Buffin v. City & Cnty. of S.F., No. 15-cv-04959-YGR, 2018 WL
4244362, at *5-12 (N.D. Cal. Jan. 16, 2018) (denying cross-motions
for summary judgment on due process and equal protection challenges
to California's statutory bail scheme).

21 Partly in response to those cases, in August 2018, California
22 enacted Senate Bill 10, which repeals the existing statutory bail
23 scheme in its entirety and creates a new "pretrial risk assessment"
24 to determine when and under what conditions a detainee should be
25 released before trial. See 2018 Cal. Legis. Serv. ch. 244 (West)
26 (signed Aug. 28, 2018, eff. Oct. 1, 2019). But the cases cited
27 above were not premised on an Eighth Amendment theory, and
Plaintiff has not alleged that his bail was set according to the
statutory scheme; it therefore does not appear that he is making
this type of claim. In any event, he cannot claim the protections
of S.B. 10 because its effective date is more than a year after the
events alleged in the Complaint.

28

1 showing that the law-enforcement officer proximately caused the
2 excessive bail amount by preventing the judicial officer from
3 exercising independent judgment. See id.

4 Plaintiff expressly alleges that his bail was set by a
5 judge. (See, e.g., Compl. at 2.) He alleges conclusorily that
6 "the charging police officer" "destroyed [his] chance for fair
7 bail" because that officer "charged a felony and not a
8 misdemeanor" (id. at 4), but he alleges no facts as to what he
9 was charged with, why the "charging officer" was wrong, what the
10 officer told the judge, if anything, and how the officer's
11 conduct prevented the judge from exercising independent judgment
12 (see id. at 2, 3, 4). Indeed, he nowhere alleges how the judge
13 calculated his bail at all, such as whether it was based on the
14 County's bail schedule or took into account any other factors
15 and, if so, what those other factors were. (See id.) And he
16 alleges that he argued "in open court" why his bail was allegedly
17 wrong. (See Compl. at 4.) The judge presumably heard his
18 argument and rejected it. (See, e.g., id. & id. at 3.) He
19 accordingly has not stated any excessive-bail claim.

20 Should Plaintiff choose to pursue an excessive-bail claim in
21 an amended pleading, he must allege specific facts showing what
22 factors were considered in setting his bail, including the extent
23 to which it was set according to the County's bail schedule; how
24 any law-enforcement officer prevented the judge from exercising
25 independent judgment in determining his bail amount; and on what
26 basis he contends it was unconstitutionally excessive. See
27 Galen, 477 F.3d at 660-61, 663-64.

1 **III. Plaintiff's False-Arrest, Malicious-Prosecution, and Sixth**
2 **Amendment Claims Appear to Be Premature**

3 Plaintiff sues in part for various alleged problems in the
4 criminal case that apparently remains pending against him and the
5 arrest underlying it. (See, e.g., Compl. at 3 (asserting, among
6 other claims, deprivation of "right to assist[] in preparing" a
7 defense and to self-representation), 4 (asserting deprivations of
8 right "to be charged with the right class [of] crime" and "to
9 access the courts" and complaining of district attorney's refusal
10 to "change the charges") .)

11 The Sixth Amendment right to self-representation encompasses
12 a right to access witnesses and legal materials necessary to
13 prepare a defense. See Taylor v. List, 880 F.2d 1040, 1047 (9th
14 Cir. 1989). A prison may, however, limit an inmate's access to
15 law books and witnesses based on security concerns or to avoid
16 "abuse by opportunistic and vacillating [criminal] defendants."
17 Id. (citation omitted). False arrest and allegedly unlawful
18 detention arising from it are analyzed under the Fourth Amendment
19 and depend on the absence of probable cause. See Manuel v. City
20 of Joliet, 137 S. Ct. 911, 918-19 (2017). Malicious prosecution
21 is cognizable under § 1983 only when the defendants "acted for
22 the purpose of depriving [the plaintiff] of a specific
23 constitutional right." Awabdy v. City of Adelanto, 368 F.3d
24 1062, 1069 (9th Cir. 2004) (citation omitted).

25 Plaintiff has not alleged why he was arrested, what – if
26 anything – he was charged with, that the arresting officer or
27 anyone else acted with intent to deprive him of any specific
28 constitutional right, whether he is currently represented by an

1 attorney or himself, or how his legal papers from 1975 would help
2 prove his allegations (see generally Compl.); he therefore has
3 not alleged sufficient facts to state a claim under any of the
4 above-noted theories. Indeed, in light of the publicly available
5 information cited supra in note 3, his claims about his criminal
6 history and the inappropriateness of felony charges seem
7 implausible.

8 That notwithstanding, under Wallace v. Kato, 549 U.S. 384,
9 393-94 (2007), the Court may stay any claim impugning the
10 validity of Plaintiff's August 12, 2018 arrest until any pending
11 criminal charges against him arising from it have been resolved.
12 Under Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), if judgment
13 in his favor would necessarily imply the invalidity of a criminal
14 conviction or sentence, the claim must be dismissed unless he can
15 demonstrate that the conviction or sentence has already been
16 invalidated. Those procedural bars apply to claims of false
17 arrest, see Wallace, 549 U.S. at 393-94, malicious prosecution,
18 see Heck, 512 U.S. at 489 (claim for malicious prosecution "does
19 not accrue until the criminal proceedings have terminated in the
20 plaintiff's favor"), and Sixth Amendment violations, see Rivas v.
21 Cal. Franchise Tax Bd., 619 F. Supp. 2d 994, 1000 n.2 (E.D. Cal.
22 2008) ("if [the plaintiff] had already been convicted, Heck would
23 apply and might bar his claims for denial of access to counsel");
24 Dunn v. Christensen, No. 2:15-cv-01812-JCM-PAL, 2018 WL 615671,
25 at *9 (D. Nev. Jan. 29, 2018) (§ 1983 "not the correct mechanism
26 to vindicate" plaintiff's Sixth Amendment rights when criminal
27 prosecution still ongoing).

28 Should Plaintiff elect to pursue any of the claims mentioned

1 in this section in an amended pleading, he must allege specific
2 facts showing that he meets the standards outlined above,
3 including what he was arrested for, what charges, if any, were
4 brought and whether they are still pending, how his records from
5 1975 would vindicate him, and whether he has an attorney or is
6 representing himself. He must also name at least one nonimmune
7 Defendant who he contends is responsible for the injuries he
8 claims. Further, he must allege specific facts showing whether
9 the Heck or Wallace doctrine applies, or both.

10 **IV. The Complaint Does Not State Any Municipal-Liability Claim
11 for Failure to Protect**

12 Plaintiff does not state any claim based on failure to
13 prevent the alleged attack on him because he evidently sues on a
14 municipal-liability theory only (see Compl. at 1-2 (naming no
15 individual Defendants in an individual capacity)) and has not
16 alleged facts as to any relevant policy, custom, or practice.⁹

17 A. Municipal-Liability Standard

18 Municipalities and local governments are considered
19 "persons" under § 1983 and therefore may be liable for causing a
20 constitutional deprivation. See Monell v. Dep't of Soc. Servs.,

22 ⁹ It is not clear that Plaintiff's failure-to-protect claim
23 is properly joined with his others. Rule 20(a)(2) of the Federal
24 Rules of Civil Procedure provides that joinder of defendants is
25 proper if claims arise "out of the same transaction, occurrence, or
26 series of transactions or occurrences" and "any question of law or
27 fact common to all defendants will arise in the action." Plaintiff's failure-to-protect claim appears to arise from distinct
28 transactions and occurrences under a different legal theory from
his various other claims, and it does not include allegations
against any people or entities named as Defendants elsewhere in the
Complaint.

1 436 U.S. 658, 690-91 (1978); see also Long v. Cnty. of L.A., 442
2 F.3d 1178, 1185 (9th Cir. 2006). Because no respondeat superior
3 liability exists under § 1983, a municipality is liable only for
4 injuries that arise from an official policy or longstanding
5 custom. City of Canton v. Harris, 489 U.S. 378, 385 (1989);
6 Monell, 436 U.S. at 694. A plaintiff must show "that a [county]
7 employee committed the alleged constitutional violation pursuant
8 to a formal governmental policy or a 'longstanding practice or
9 custom which constitutes the standard operating procedure of the
10 local governmental entity.'" Gillette v. Delmore, 979 F.2d 1342,
11 1346 (9th Cir. 1992) (per curiam) (citation omitted).

12 In addition, a plaintiff must allege facts demonstrating
13 that the policy was "(1) the cause in fact and (2) the proximate
14 cause of the constitutional deprivation." Trevino v. Gates, 99
15 F.3d 911, 918 (9th Cir. 1996). "Liability for improper custom
16 may not be predicated on isolated or sporadic incidents; it must
17 be founded upon practices of sufficient duration, frequency and
18 consistency that the conduct has become a traditional method of
19 carrying out policy." Id.; see also Thompson v. City of L.A.,
20 885 F.2d 1439, 1443-44 (9th Cir. 1989) ("Consistent with the
21 commonly understood meaning of custom, proof of random acts or
22 isolated events are [sic] insufficient to establish custom."),
23 overruled on other grounds by Bull v. City & Cnty. of S.F., 595
24 F.3d 964, 981 (9th Cir. 2010) (en banc). "A custom can be shown
25 or a policy can be inferred from widespread practices or
26 'evidence of repeated constitutional violations for which the
27 errant municipal officers were not discharged or reprimanded.'"
28 Pierce v. Cnty. of Orange, 526 F.3d 1190, 1211 (9th Cir. 2008)

1 (as amended) (quoting Gillette, 979 F.2d at 1349).

2 B. Analysis

3 Plaintiff sues the Orange County Sheriff's Department for
4 failure to protect him from being attacked by another inmate.

5 (See Compl. at 2, 3, 4.) He was apparently a pretrial or civil
6 detainee at the time. (See, e.g., id. at 6, 7.) Such detainees
7 may sue prison officials under the Due Process Clause of the 14th
8 Amendment for injuries suffered in custody. See Castro v. Cnty.

9 of L.A., 833 F.3d 1060, 1067-68 (9th Cir. 2016) (en banc). To
10 state such a claim based on failure to protect, the plaintiff
11 must allege that (1) the defendant "made an intentional decision
12 with respect to" the plaintiff's conditions of confinement, which
13 (2) "put the plaintiff at substantial risk of suffering serious
14 harm," and (3) failed to take "reasonable available measures to
15 abate that risk" in a way that (4) "caused the plaintiff's
16 injuries." See id. at 1071. "With respect to the third element,
17 the defendant's conduct must be objectively unreasonable[.]" Id.
18 Although a showing of subjective intent is therefore not
19 required, objective unreasonableness requires "more than
20 negligence" — "something akin to reckless disregard." See id.

21 Plaintiff appears to allege that nondefendant "Deputy Arazo"
22 knew of the other inmate's threats and, among other things, "said
23 that he did [not] give a shit for [Plaintiff] and hoped someone
24 would get [him]. " (Compl. at 3.) But he has alleged no facts as
25 to the existence of any relevant policy, custom, or practice
26 giving rise to Deputy Arazo's purported conduct. See Harris, 489
27 U.S. at 385; Gillette, 979 F.2d at 1346. Nor do his allegations
28 suggest that the encounter with "Mr. Shipp" or whoever attacked

1 him was anything more than an isolated incident involving a
2 single deputy, which cannot support a municipal-liability claim.
3 See Trevino, 99 F.3d at 918. As Monell liability is apparently
4 his only theory of relief on his failure-to-protect claim (see,
5 e.g., Compl. at 2, 3), that claim fails.

6 Should Plaintiff decide to pursue any official-capacity
7 claim in an amended pleading, he must allege specific facts
8 showing that a sheriff's-department policy, custom, or practice
9 proximately caused the constitutional deprivations he claims to
10 have suffered. See Monell, 436 U.S. at 694; Harris, 489 U.S. at
11 385.

12 **V. Plaintiff's Request for Relief Is Improper**

13 The Complaint includes requests for an injunction preventing
14 Plaintiff from being prosecuted for "felonies" and \$10 million in
15 punitive damages. (Compl. at 7.) As discussed above in Section
16 I.B, his request for injunctive relief is improper and the State
17 is immune under the 11th Amendment from suit for damages of any
18 kind. Moreover, local-government entities and their employees in
19 their official capacity are immune from suit for punitive damages
20 under § 1983. See Kentucky v. Graham, 473 U.S. 159, 167 n.13
21 (1985) ("punitive damages are not available under § 1983 from a
22 municipality"). He should omit such demands from any amended
23 pleading he chooses to file.

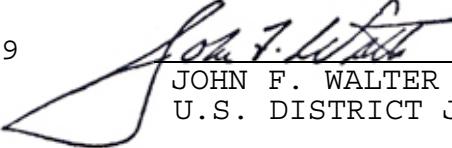
24 *****

25 If Plaintiff desires to pursue his claims, he is ORDERED to
26 file a first amended complaint within 28 days of the date of this
27 order, remedying the deficiencies discussed above. The FAC
28 should bear the docket number assigned to this case, be labeled

1 "First Amended Complaint," and be complete in and of itself,
2 without reference to the original Complaint or any attachment to
3 it. **Plaintiff is warned that if he fails to timely file a**
4 **sufficient FAC, the Court may dismiss this action on the grounds**
5 **set forth above or for failure to diligently prosecute.**

6

7 DATED: February 26, 2019


JOHN F. WALTER
U.S. DISTRICT JUDGE

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11 Presented by:


12 Jean P. Rosenbluth
13 U.S. Magistrate Judge